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OFFICE OF PETITIONS

In re Application of :
Huang et al. :
Application No. 09/900,713 : DECISION ON PETITION
Filed: 5 July, 2001 :
Atty Docket No. 15436.249.30.1 :
:

This is a decision on the petition filed on 7 July, 2006, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is GRANTED.

The application became abandoned on 21 December, 2003, for failure to timely and properly reply to the final Office action mailed 20 June, 2003, which set a three (3) month shortened statutory period for reply. On 20 December, 2003, a three (3)

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

month extension to time under 37 CFR 1.136(a) and a Request for Continued Examination were filed. A final Office action was mailed on 16 January, 2004. On 28 June, 2006, however, a Notice of Abandonment was mailed, stating that the Office action mailed on 16 January, 2004, was vacated, and the application abandoned, because no submission under 37 CFR 1.114 had been timely filed with the RCE Request.

Petitioner states that the amendment filed on 16 March, 2004, is the required reply.

In accepting this petition, the Office is construing the amendment filed on 16 March, 2004, to be the submission required under 37 CFR 1.114 to the RCE filed on 20 December, 2003, and the RCE and submission to be the response to the final Office action mailed on 20 June, 2003.

This application is being referred to the Technology Center for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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